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PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants:	Christopher S. Burgey et al.		
Patent No.:	7,476,665 B2		
Issue Date:	January 13, 2009		
Serial No.:	10/562,297	Case No.:	21832YP
Filing Date:	December 22, 2005		
For:	SPIROHYDANTOINS ARE CGRP RECEPTOR ANTAGONISTS USEFUL FOR THE PREVENTION OR TREATMENT OF MIGRAINE		

Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22313-1450

REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT PERIOD
UNDER 37 C.F.R. § 1.705 (d)

Sir:

Pursuant to 37 C.F.R. § 1.705(d), patentees hereby request reconsideration of the PTO's determination of 234 days of patent term adjustment (PTA) for the above-referenced patent. Applicants respectfully submit that patentees are entitled to an additional period of 22 days under 37 C.F.R. § 1.702(a)(4), for a total adjustment period of 256 days, because of the PTO's failure to issue the granted patent within three years of pendency.

This patent was granted January 13, 2009. The PTO acknowledged on the face of the patent, that the patentee is entitled to a 234 day period of patent term adjustment. According to the PAIR records, the adjustment period is due to the failure of the PTO to issue an office action within fourteen months of filing, under 35 U.S.C. § 154(b)(1)(A). The actual filing date of this application in the United States was December 22, 2005. The PTO issued a first office action (a restriction requirement) on January 2, 2008, 284 days after the 14-month date. The 284 day period was reduced by 48 days under 35 U.S.C. § 154(b)(1)(C), for applicants' failure to timely respond to the January 2, 2008 office action. Accordingly, the patent was accorded 234 days of adjustment.

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Patentees now assert that they are entitled to an additional 22 day adjustment period, under 35 U.S.C. § 154(b)(1)(B). Section 154(b)(1)(B) provides that applicants are entitled to a term adjustment "if the issue of an original patent is delayed due to the failure of the United States Patent and Trademark Office to issue a patent within 3 years after the actual filing date of the application in the United States." The actual filing date of this application in the United States was December 22, 2005, when the requirements of 35 U.S.C. § 371 were met. This patent issued January 13, 2009, and thus the pendency period was 3 years and 22 days. Applicants should therefore be entitled to an additional 22 day patent term adjustment, and should be accorded 256 days of adjustment.

Under the decision of the United States District Court for the District of Columbia, in *Wyeth v. Dudas*, 2008 U.S. Dist. LEXIS 76063 (U.S. Dist. D.C. Sept. 30, 2008), any delay under section 154(b)(1)(B) for a pendency of more than three years, such as the aforementioned 22 day period, is granted in addition to any delay under section 154(b)(1)(A), such as the 234 day period.

Hence, patentees are entitled to an additional 22 days of patent term adjustment, for a total of 256 days of patent term adjustment.

Please charge the fee due for this request (\$200.00 + 37 C.F.R. § 1.18(e)) to Merck Deposit Account No. 13-2755. Kindly charge any deficiencies or credit any overpayment to Deposit Account No. 13-2755.

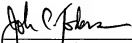
Favorable action is earnestly solicited.

Respectfully submitted,

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia 22313-1450, on the date appearing below.

By A. Reynolds Date 1/27/09
MERCK & CO., INC.

By


John C. Todaro, Reg. No. 36,036
Attorney for Applicants

MERCK & CO., Inc.
P.O. Box 2000
Rahway, New Jersey 07065
Tel.: (732) 594-0125

Date: January 16, 2009